

DEPARTMENT OF FOOD AND AGRICULTURE

FINAL STATEMENT OF REASONS

Hearing Date: No hearing was scheduled by the Department of Food and Agriculture (Department) and no hearing was requested by the public regarding this proposal.

Subject Matter of

Proposed Regulations: Personal Licenses; Fluid Milk Composition Testing

Section(s) Affected: Various sections of Articles 13, 14, 14.5, 14.6, 14.7, 14.8, and 21

Updated Information

The Initial Statement of Reasons is included in this file and accurately reflects the final regulatory action taken by the Department. It is updated as follows:

- 1) Section 512.2(f): The reference to section 525(f) should read 525(e).
- 2) Section 512.2(h): The reference to section 525(h) should have been stricken and amended with subsection (e).
- 3) Section 513.5(a): The reference to section 525(f) should read 525(e).

Incorporation by Reference

The forms and publications specified in this proposal are incorporated by reference because the documents are cumbersome, unduly expensive, and otherwise impractical to publish in the California Code of Regulations. Dairy industry persons are provided with the appropriate forms and publications, and/or are provided with information on how to obtain specific sections of the following referenced documentation:

- Information regarding the Standard Methods for the Examination of Dairy Products (SMEDP), 17th Edition, published by the American Public Health Association. The SMEDP provides the dairy industry, associated research organizations, and governmental bodies charged with ensuring the safety and wholesomeness of dairy products with validated methodology to ensure that harmful levels of organisms and other substances are absent and that the nutritive qualities, flavor, and appearance of products meet established specifications.
- Information and Methods of the Official Methods of Analysis, 18th Edition, published by the Association of Official Analytical Chemists International (AOAC). The AOAC evolved from a group of chemists in the United States Department of Agriculture and the individual states into an independent scientific association of analytical scientists with members throughout the world. The AOAC is the leader in providing validated methods, proficiency test samples, accreditation criteria, and scientific information to industry, government agencies, and academic institutions.

- Information regarding the National Institute of Standards and Technology (NIST) published by the Department of Commerce. NIST is an agency of the Department of Commerce. Its role as the National Measurement Institute for the United States was established by Congress in 1901. As such, NIST has the responsibility to develop, maintain and retain custody of the national standards of measurement, and to provide the means and methods for making measurements consistent with those standards; and to assure the compatibility of United States national measurement standards with those of other nations [15 USC 271].
- Forms:
 Pasteurizer's License Application, Form No. 72-255 (Rev. 7/05)
 Tester's License Application, Form No. 72-202 (Rev. 11/05)
 Butter Grader's License Application, Form No. 72-267 (Est. 7/05)
 Sampler's and Weigher's License Application, Form No. 72-246 (Rev. 2/06)
 Technician's License Application, Form No. 72-252 (Rev. 7/05)

Local Mandate

A mandate is not imposed on local agencies or school districts.

Business Impact

The Department has determined that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Department would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action described in this filing.

Summary of Objections/Recommendations/Responses

1) Electronic mail, dated September 25, 2006, from Pascal Destandau, Pugs Leap Farm, asked how this proposal may impact a small producer operating 60 gallon batch pasteurizers, three times per week.

The Department's Notice of Proposed Action was properly published and mailed to all interested persons pursuant to section 11346.4 of the Government Code [Register 2006, No. 38-Z]. It specified the purpose and intent of this proposal, and contained information on the fiscal impact upon businesses pursuant to section 4 of Article 2, Chapter 1, Division 1, of Title 1 of the California Code of Regulations. The Department's Notice of Proposed Action clearly provided information on how the public may obtain additional information regarding this proposal, including the

Department's web address where the regulatory documents may be accessed electronically.

The commenter indicated that he is a small producer operating batch pasteurizers whereas this proposal pertains to infrared testing protocols that payment laboratories use for producer payment and fluid milk testing. The other aspects of this proposal include deleting obsolete testing protocols and updating the requirements for a person to obtain a license from the Department to work in the dairy industry.

This proposal could impact a small producer, however, the impact would not adversely affect businesses. As the Department's Notice of Proposed Action specified, record keeping is an anticipated compliance requirement of this proposal. This requirement impacts both large and small producers; however, record keeping is a standard business practice, and this proposal does not impose any new or additional record keeping requirements upon a person or businesses.

2) Electronic mail, dated September 25, 2006, from Rex Backus, Director, District 8 American Dairy Goat Association, stated that he received the Department's communication regarding this proposal, however, it was not signed or dated, contained a website address that was of little utility as there was no heading which refers to proposed rulemaking. He asked for the Department to e-mail a copy of the abstract of the proposed rule changes or provide a specific URL where the substance of the changes may be inspected.

The Department's Notice of Proposed Action was properly published and complied with section 11346.4 of the Government Code [Register 2006, No. 38-Z]. The Department's Notice of Proposed Action stated the purpose of this proposal and included specific instructions on how the public may obtain additional information regarding this proposal and the Department's web address where the regulatory documents may be accessed electronically. The Department provided its main web site address, www.cdfa.ca.gov. When a person accesses this address, the heading "Regulations" is clearly stated on the main, first page, in the left-hand column.

3) Electronic mail, dated September 25, 2006, from Rex Backus, Director, District 8 American Dairy Goat Association, stated that he is concerned there may be a reversion at some time to the improper use of infrared machines to evaluate somatic cell counts in goat milk. He believed that the only approved method for somatic cell count evaluation of goat milk was the use of the pyronin "y" stain method. He believes that there have been occasions where laboratories, or individual technicians, would use infrared machines such as the older Coulter and Fossomatic machines to test goat milk with the mistaken assumption that the test results were valid. His concern is that such improper testing procedures might be inadvertently included in the current rulemaking process.

Rejected. Somatic cell counts of milk means the number of white blood cells per milliliter of milk or the measurement of the number of somatic cells present in a sample of milk. All milk naturally contains some somatic cells, which enable cows

(and goats) to fight infection and ensure good health. Farmers routinely monitor their herds for somatic cell counts as a general gauge of the cow's well-being.

Infrared is a spectrum of light reflected off chemical bonds in the milk from an infrared light source. The infrared method is used to measure fat and protein composition from a sample of milk.

The requirements for the minimum, allowable somatic cell counts of milk are contained in section 625 of Article 21, Chapter 1, Division 2 of Title 3 of the California Code of Regulations. The Department is not amending section 625 at this time; therefore, this comment relating to somatic cell counts of goat milk is outside the scope of this proposal.

4) Electronic mail, dated September 25, 2006, from Claudia Sheridan, Queso Bueno, Inc., Pico Rivera, California, stated that her cheese factory is a family owned business and asked how her small business would be affected by this proposal.

The Department's Notice of Proposed Action specified the purpose and intent of this proposal and contained information on the fiscal impact upon businesses pursuant to section 4 of Article 2, Chapter 1, Division 1, of Title 1 of the California Code of Regulations. The Department's Notice of Proposed Action was properly published and complied with section 11346.4 of the Government Code [Register 2006, No. 38-Z].

The majority of the proposed regulations pertain to updating infrared testing protocols that laboratories use for producer payment and for fluid milk testing. Several instruments in existing regulations are obsolete and the sections in this proposal regarding these topics have been streamlined and consolidated. Also included in this proposal are updates to the application, examination and licensure requirements for persons working in the dairy industry. Therefore, as stated in the Department's Notice of Proposed Action, this proposal would have no significant adverse fiscal impacts upon businesses. The Notice of Proposed Action also contained disclosures of anticipated compliance requirements, which included record keeping, which is a standard practice for a person or a business engaged in the dairy industry.

5) Electronic mail, dated September 29, 2006, from Patty, M&H Transport, Inc., asked how this proposal would affect their company.

This proposal pertains to updating infrared testing protocols that laboratories use for producer payment and for fluid milk testing. Several instruments in existing regulations are obsolete and the sections in this proposal regarding these topics have been streamlined and consolidated. Also included in this proposal are updates to the application, examination and licensure requirements for persons working in the dairy industry. Therefore, this proposal could affect the commenter's applicants for a sampler's and weigher's license, which a transport company employs to collect

samples of milk, by amending the requirement for passing score of the license examination from 70 percent to 80 percent. Also, as stated in the Department's Notice of Proposed Action, this proposal would have no significant adverse fiscal impacts upon businesses. The anticipated compliance requirements for businesses included record keeping, which is a standard practice for a person or a business engaged in the dairy industry.

No further comments were received regarding this proposal.